



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 9450423

Date: JULY 28, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a human rights lawyer and legal researcher, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The Director also found that the Petitioner had not established that she intends to continue her work in the United States, or that her entry will substantially benefit prospectively the United States. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131–32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner has served on the faculties of various universities in Venezuela, most recently [redacted] [redacted] University, where she is a professor and researcher at the [redacted] and coordinator of the [redacted]. Since 2014, she has been executive director of the [redacted], a human rights organization that she founded in Venezuela. She is also the chief executive officer of the [redacted] a New Jersey-based nonprofit organization that she co-founded in 2018.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met eight criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;

- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner met the three criteria numbered (iv), (vi), and (viii). On appeal, the Petitioner asserts that she also meets the other five claimed evidentiary criteria. Because we agree with the Director that the Petitioner has satisfied at least three criteria, we need not discuss them in detail here. We will, however, note that the evidence presented in support of the various criteria is not of uniform strength. For instance, when discussing the seventh criterion, the Petitioner has contended that her reports and presentations are “displayed” to the public, but when quoting the regulation, the Petitioner has consistently omitted the word “artistic,” which is integral and essential, rather than incidental, to the regulation cited. Notwithstanding such issues, a petitioner need not satisfy *every* criterion claimed to reach a final merits determination, so long as they satisfy at least three of them.

## B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>1</sup> In this matter, we determine that the Petitioner has established her eligibility by a preponderance of the evidence.

The record as a whole supports a finding of eligibility. The Director acknowledged the Petitioner’s leading or critical role for organizations or establishments with a distinguished reputation. Foremost in this respect is her leadership of [REDACTED]. The record establishes that [REDACTED] has been involved in several national-level civil rights initiatives, and the Petitioner’s leadership of that organization has led to frequent consultations at national and international levels, with organizations such as Venezuela’s [REDACTED] (which designated her a permanent advisor to the [REDACTED] [REDACTED]) and various committees of the United Nations. Other nations have taken notice of her work as well, as shown by a commissioned report for the [REDACTED] to Venezuela.

The Petitioner has established not only a dedicated and productive career, but one that has attracted high-level attention in academia, government, and non-governmental organizations (NGOs), while earning the respect and accolades of other activists in her field.

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<sup>1</sup> *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that adjudicators should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

### C. Continued Work in the Field and Substantial Prospective Benefit to the United States

On the petition form, asked for a very short description of her occupation, the Petitioner described herself as a human rights researcher. In a request for evidence, the Director stated that the Petitioner is “running an NGO” and “working as an attorney instead of as a Human Rights Researcher.” In the denial notice, the Director concluded that the Petitioner had not addressed these points, and therefore it was not evident that the Petitioner seeks to continue working as a human rights researcher.

The Director’s conclusion appears to rest on a misunderstanding of the Petitioner’s research work. The record demonstrates that the Petitioner conducts research in furtherance of her broader activities as an attorney and activist, pursuing actions both within and beyond the government to address matters of concern in human rights (emphasizing, but not limited to, women’s rights). The benefit arising from her work does not derive directly from the research element of that work, but from increased awareness of human rights violations and political pressure to remedy them. The grounds raised in the request for evidence, and indirectly referenced in the denial notice, do not support a conclusion that the Petitioner will not continue to work to advance human rights or that the United States will not benefit from the presence of a dedicated human rights activist.

### III. CONCLUSION

The Petitioner has established that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x). She has also demonstrated sustained national acclaim in her field and submitted extensive documentation of her achievements. Lastly, the Petitioner has shown that she intends to continue working in the United States in his area of expertise and that her entry will substantially benefit prospectively the United States. She therefore qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is sustained.